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DEPARTMENT OF EDUCATION

Arts in Education National Program; Final priority, requirements, definitions, and selection criteria (CFDA Number 84.351F)

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces the final priority, requirements, definitions, and selection criteria under the Arts in Education National Program (AENP). The Assistant Secretary may use this priority and these requirements, definitions and selection criteria for competitions in fiscal year (FY) 2012 and later years. We take this action to encourage and expand national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families and children with disabilities.

EFFECTIVE DATES: This priority and these requirements, definitions, and selection criteria are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202-5950. Telephone: (202) 260-1280 or by e-mail: [artsdemo@ed.gov](mailto:artsdemo@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the AENP is to support national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families and children with disabilities.

Program Authority: 20 U.S.C. 7271.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99.

(b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

We published a notice of proposed priority, requirements, definitions, and selection criteria for this program in the Federal Register on February 2, 2012 (77 FR 5243). That notice contained background information and our reasons for proposing the particular priority,

requirements, definitions, and selection criteria.

Except for minor editorial revisions, there are no differences between the proposed priority, requirements, and selection criteria and this final priority, requirements, and selection criteria. There are minor editorial changes in the definitions section. These changes are fully explained in the Analysis of Comments and Changes section elsewhere in this notice.

Public Comment: In response to our invitation in the notice of the proposed priority, requirements, definitions, and selection criteria, four parties submitted comments on the proposed priority, requirements, definitions, and selection criteria.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make. In addition, we do not address general comments that raised concerns not directly related to the proposed priority, requirements, definitions, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority, requirements, definitions, and selection criteria since publication of the notice of proposed priority, requirements, definitions, and selection criteria follows.

Comment: One commenter inquired as to whether the Department intended to provide a higher priority to applicants that propose to serve younger learners.

Discussion: The Department is not proposing that a particular age group be given priority. Because the AENP is a national program, we expect that the age groups to be targeted and the types of proposed programming will vary across the country. We believe that applicants should have the flexibility to plan and carry out activities and services that best address the specific needs of the students they serve.

Changes: None.

Comment: One commenter suggested that the Department broaden the language for both the professional development requirement and the development and dissemination of instructional materials requirement to specifically include general classroom teachers who use the arts in their classrooms. The commenter stated that general classroom teachers have had little, if any, professional development either in teaching about the arts or integrating the arts with other curricula. The commenter further stated that general classroom teachers should have access to online instructional materials so they can effectively use the arts in their classrooms.

Discussion: The Department agrees that general classroom teachers who use arts in their classroom should receive the necessary professional development and instructional materials in order to provide quality instruction in the arts. In fact, the definition for "arts educator" on page 5244 of the February 2, 2012, proposed notice is "a teacher or other instructional staffer who works in music, dance, theater, media arts or visual arts, including folk arts." Therefore, general classroom teachers who use arts in their classroom, as well as other educators who instruct children in the arts, meet the definition included in this notice and may benefit from professional development, instructional materials, and other services provided under the AENP.

Changes: None.

Comment: The same commenter suggested that the Department provide a definition for the term "child with disabilities" as that term is used in the notice.

Discussion: We agree.

Changes: We are including a definition of "children with disabilities." For purposes of this program, "children with disabilities" means children who meet the definition of "individual with a disability" applicable to Section 504

of the Rehabilitation Act of 1973, as amended, which is set out at 29 U.S.C. 705(20)(B).

Comment: The same commenter raised concerns about the language under Executive Order 13563(4) on page 5245 of the February 2, 2012, notice of proposed priority, requirements, definitions, and selection criteria. The commenter stated that performance objectives would not provide for the kind of rigorous evaluation that should be part of AENP and recommended that the evaluation requirements be strengthened. The commenter further stated that a well-tailored research and evaluation platform would assist the grantee in knowing which programs worked, what made them successful, how they affected the target group, and provide qualified examples for others.

Discussion: In the 2012 AENP notice inviting applications for new awards, published elsewhere in this issue of the Federal Register, we are including selection criteria from the Education Department General Administrative Requirements (EDGAR) on the quality of the project evaluation, which address the commenter's concerns.

Changes: We have added selection criteria on evaluation under the heading "Quality of the project evaluation" in the notice inviting applications.

Comment: One commenter recommended that the art-based educational programming requirement be modified to emphasize the importance of sequential, standards-based teaching that is unique to music education. The commenter added that it would be beneficial for the Department to acknowledge the importance of such student engagement, particularly among children from low-income families (as defined in this notice).

Discussion: The Department believes that the commenter's concern is addressed by the professional development requirement. Applicants are required to describe in their applications how professional development in all of the arts, including music, will be aligned with State and national standards. In addition, the quality and depth of an applicant's professional development plan and the potential impact on teachers, and ultimately their students, will be evaluated by peer reviewers. This includes the impact of the professional development on children from low-income families and on children with disabilities. The Department is not giving any particular discipline a priority.

Changes: None.

Comment: One commenter suggested that the Department fund multiple projects and organizations under AENP in order to

more significantly affect students by supporting diversified approaches to teaching and learning through the arts.

Discussion: The funds available for this program will likely not be sufficient to support more than one grant, particularly given the national-level requirement of the projects. Applicants are free to request sufficient funding to address the scope and cost of the services to be provided up to the maximum level of funding available. If the requested budget of the highest ranked application does not reach the maximum funding available, and if sufficient funding remains, an additional applicant could receive funding.

Changes: None.

FINAL PRIORITY:

One or more high-quality projects that are designed to develop and implement, or expand, initiatives in arts education and arts integration (as defined in this notice) on a national level for pre-kindergarten-through-grade-12 children and youth, with special emphasis on serving children from low-income families (as defined in this notice) and children with disabilities (as defined in this notice). In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding



will provide services and develop initiatives in multiple schools and school districts throughout the country, including in at least one urban, at least one rural, and at least one high-need community (as defined in this notice).

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an

application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

FINAL ELIGIBILITY AND APPLICATION REQUIREMENTS:

The Assistant Deputy Secretary establishes the following eligibility and application requirements for this program. We may use one or more of these requirements in any year in which we award grants for the AENP.

1. To be eligible for an award, an applicant must be a national nonprofit arts education organization (as defined in this notice).

2. An applicant must describe in its application how it would serve children from low-income families (as defined in this notice) and children with disabilities.

3. An applicant must describe in its application how it would implement the following activities and services at the national level:

(i) Professional development based on State or national standards for pre-kindergarten-through-grade-12 arts educators.

Note: National standards are the arts standards developed by the Consortium of National Arts Education Associations or another comparable set of national arts standards. The standards developed by the Consortium outline what students should know and be able to do in the arts. These are not

Department standards. To view the standards, please go to [www.menc.org/resources/view/the-national-standards-for-arts-education-a-brief-history](http://www.menc.org/resources/view/the-national-standards-for-arts-education-a-brief-history).

(ii) Development and dissemination of instructional materials, including online resources, in music, dance, theater, media arts, and visual arts, including folk arts, for arts educators.

(iii) Arts-based educational programming in music, dance, theater, media arts, and visual arts, including folk arts, for pre-kindergarten-through-grade-12 students and arts educators.

(iv) Community and national outreach activities and services that strengthen and expand partnerships among schools, school districts, and communities throughout the country.

#### FINAL DEFINITIONS:

The Assistant Deputy Secretary establishes the following definitions for this program. We may use one or more of these definitions in any year in which we award grants for the AENP.

Arts means music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher or other instructional staffer who works in music, dance, theater, media arts, or visual arts, including folk arts.

Arts integration means (i) using high-quality arts instruction within other academic content areas, and (ii) strengthening the arts as a core academic subject in the school curriculum.

Child from low-income family means a child who is determined by a State educational agency or local educational agency to be a child, in pre-kindergarten through grade 12, from a low-income family, on the basis of (a) the child's eligibility for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (b) the child's eligibility for medical assistance under the Medicaid program under title XIX of the Social Security Act, (c) the family having an income that meets the poverty criteria established by the U.S Department of Commerce, or (d) the family's receipt of assistance under Part A of title IV of the Social Security Act.

Children with disabilities means children who meet the definition of "individual with a disability" applicable to Section 504 of the Rehabilitation Act of 1973, as amended, which definition is set out at 29 U.S.C. 705(20)(B).

High-need community means (i) a political subdivision of a State or portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or (ii) a political subdivision of a State that is among the 10 percent of political subdivisions of the State having the greatest numbers of such children. For the purposes of determining if a community meets this definition, the term "low-income families" means families that have an income that meets the poverty criteria established by the U.S. Department of Commerce for the most recent fiscal year for which satisfactory data are available.

National non-profit arts education organization means an organization of national scope that is supported by staff or affiliates at the State and local levels and that has a demonstrated history of advancing high-quality arts education and arts integration for arts educators, education leaders, artists, and students through professional development, partnerships, educational programming, and supporting systemic school reform.

FINAL SELECTION CRITERIA:

The Assistant Deputy Secretary establishes the following selection criteria for evaluating an application under this program. We may apply one or more of these

criteria, as well as criteria from the Education Department General Administrative Regulations in 34.CFR 75.210, in any year in which this program is in effect. We will announce the maximum possible points assigned to each criterion in the notice inviting applications, or the application package, or both.

(1) Significance. The Secretary reviews each application to determine the extent to which--

(a) The proposed project is likely to build State and local capacity to provide, improve, or expand arts education and arts integration that address the needs of children and youth, with special emphasis on serving children from low-income families and children with disabilities; and

(b) The applicant has a history of three or more years of demonstrated excellence in the areas of arts education and arts integration on a national scale.

(2) Quality of the project design. The Secretary reviews each application to determine the extent to which--

(a) The design of the proposed project is appropriate to, and will successfully address, the arts education needs of pre-kindergarten-through-grade-12 children and youth, with special emphasis on children from low-income families and children with disabilities;

(b) The proposed project will provide high-quality professional development for pre-kindergarten-through-grade-12 arts educators who provide instruction in music, dance, drama, media arts, or visual arts, including folk arts;

(c) The proposed project will develop and disseminate instructional materials, including online resources, in multiple arts disciplines for arts educators and other instructional staff;

(d) The proposed project will support arts-based educational programming; and

(e) The proposed project will provide community and national outreach that strengthens and expands partnerships among schools, school districts, and communities throughout the country.

(3) Quality of project services. In determining the quality of the services to be provided by the proposed project, the Secretary considers the extent to which--

(a) The services to be provided by the proposed project involve the collaboration of appropriate partners in order to maximize the effectiveness of project services; and

(b) The proposed project will provide services and initiatives that will reach students and arts educators in

multiple schools and school districts in urban, rural, and high-need communities throughout the country.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, requirements, definitions, and selection criteria, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563  
Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment,



public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory

action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

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Dated: June 12, 2012

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Innovation and Improvement.

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